

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	CRIMINAL ACTION NO.
	:	2:13-CR-00015-RWS
LARRY McDANIEL, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

This case is before the Court for consideration of the Reports and Recommendations [41, 44] of Magistrate Judge J. Clay Fuller. After reviewing the record, the Court enters the following Order.

In the Report and Recommendation [41] entered by Judge Fuller on August 27, 2013, he recommended that Defendant McDaniel's Motion to Suppress Statements [19] be denied. The substance of this Motion was previously addressed in a Report and Recommendation issued by Judge Fuller in the case of United States v. McDaniel, Case No. 2:12-CR-28-RWS-JCF (the "2012 case") following an evidentiary hearing. The Court adopted the Report and Recommendation in the 2012 case and denied the Motion to Suppress. ([134] in 2012 case). For the same reasons stated in the Report and

Recommendation in the 2012 case, Judge Fuller again recommends denial of the Motion to Suppress. No objections have been filed to the Report and Recommendation in the present case. For the reasons stated in the Court's Order in the 2012 case adopting the Report and Recommendation, the Report and Recommendation [41] in this case is received with approval and adopted as the Opinion and Order of this Court. Accordingly, Defendant McDaniel's Motion to Suppress Statements [19] is **DENIED**.

In the October 2, 2013 Report and Recommendation [44] of Judge Fuller, he recommends that the Court grant Defendants' Motions to Dismiss [18, 21, 30] as to Count Two and as to Count One to the extent that Count One alleges as an object of the charged conspiracy Defendants' obstruction of an FBI investigation in violation of 18 U.S.C. § 1512(c)(2). Judge Fuller recommends denying the Motions to Dismiss as to all other charges.

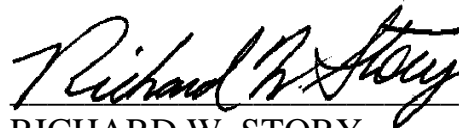
Judge Fuller's recommendation to grant portions of the Motions to Dismiss is based upon his conclusion that "official proceeding" for purposes of 18 U.S.C. § 1512(c)(2) does not include an FBI investigation. Judge Fuller provided a thoughtful and comprehensive analysis of the issue with which this Court agrees. The Court has considered the Objections [48] filed by the

Government and Defendant King's Response [49] thereto. However, this Court finds that with the exception of the following issues, all of the issues raised in the Objections are addressed in the Report and Recommendation. In the Objections, the Government urges the Court to consider the legislative history of the act. Because the Court finds the language of the act to be unambiguous, it is not persuaded by the legislative history to reach a conclusion different from that reached by Judge Fuller. As for the decision in the appeal of United States v. Hampton, Case No. 1:11-CR-410-RWS-RGV, the Court finds that the *per curiam*, unpublished opinion fails to provide direction on this issue. United States v. Hampton, Case No. 13-10061, 2014 WL 351680 (11th Cir. Feb. 3, 2014).

Therefore, the Report and Recommendation [44] is received with approval and adopted as the Opinion and Order of this Court. Accordingly, Defendants' Motions to Dismiss [18, 21, 30] are **GRANTED IN PART** and **DENIED IN PART**. The Motions are **GRANTED** as to Count Two of the Indictment and as to Count One to the extent that Count One alleges as an object of the charged conspiracy Defendants' obstruction of an FBI

investigation in violation of 18 U.S.C. § 1512(c)(2). The Motions are otherwise
DENIED.

SO ORDERED this 14th day of May, 2014.

A handwritten signature in black ink, reading "Richard W. Story", is written over a horizontal line.

RICHARD W. STORY
UNITED STATES DISTRICT JUDGE